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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 COSTCO WHOLESALE CORPORATION,

9 Plaintiff,

10 v.

11 ARROWOOD INDEMNITY COMPANY,

12 Defendant.

NO. C17-1212RSL

ORDER GRANTING IN PART
DEFENDANT'S MOTION TO FILE
UNDER SEAL

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14 This matter comes before the Court on Arrowood Indemnity Company's "Motion to File
15 Under Seal" an unredacted version of its motion for summary judgment and certain exhibits in
16 support of that motion. Dkt. # 51. Arrowood does not believe that any of the information or
17 exhibits should be protected from public view but filed the motion pursuant to the terms of the
18 protective order entered in this case so that Costco would have an opportunity to justify its
19 designations.
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21 Costco acknowledges that the Declaration of Alexander E. Potente and the attached
22 exhibits (Dkt. # 55) are not confidential and may be unsealed.
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24 As to the other documents Arrowood filed under seal, Costco directs the Court to the
25 reply it filed regarding its own motion to seal. The documents are not mentioned in the reply by
26 docket number, however, and Costco makes no effort to show that any particular document at
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28 ORDER GRANTING IN PART DEFENDANT'S
MOTION TO FILE UNDER SEAL - 1

1 issue in this motion should be protected from public view. The only argument explicitly raised is
2 that there are “eleven exhibits filed under seal that the parties could not reach agreement on and
3 therefore needed to remain confidential.” Dkt. # 69 at 3. The fact that Costco would not agree to
4 remove its confidentiality designations does not necessarily mean that the document is, in fact,
5 confidential.
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7 The Court assumes that Costco is raising the same privilege, mediation, and settlement
8 agreement arguments it raised in support of its own motion to file under seal. For the reasons
9 stated in the Order Granting in Part Plaintiff’s Motion to File Under Seal, Costco’s disclosure of
10 information to its insureds - including its attorneys’ summaries of the claims against it, the
11 parties’ settlement negotiations, the relative positions of the parties, and the prospects for a
12 negotiated resolution - are generally protected by the work product doctrine and need not be
13 made available to the public. Costco has not, however, justified its efforts to keep its insurers’
14 objections/coverage determinations hidden from the public, nor has it addressed the “Costco
15 Project Review” PowerPoint presentation slides. Exhibits 14, 15, and 30 to the Declaration of
16 Leif T. Aus will, therefore, be unsealed.
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19 Costco has also designated the declaration and expert reports of two of Arrowood’s
20 experts as confidential. Having reviewed the documents, it appears that the designations are
21 based on references to “awards” and/or “award amounts” that are subject to a confidentiality
22 provision in the underlying settlement agreement. See, e.g., Dkt. # 54-9 at 34 (referencing the
23 outcome of the Brunson arbitration and Appendix B); Dkt. # 56-1 at 26 (two columns indicating
24 which side won in arbitration). As discussed in the companion order, general references to costs
25 and expenses incurred in litigation, negotiated settlement amounts, or the average amount of
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1 arbitration awards are too general to fall within the confidentiality provision of the settlement
2 agreement. Only references to the actual “awards” and “award amounts” each claimant obtained
3 in an arbitral proceeding initiated under the settlement agreement are properly designated as
4 confidential. Costco may, if it chooses, file redacted versions of the expert declaration, reports,
5 and exhibits.
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8 For all of the foregoing reasons, defendant’s motion for leave to file documents under
9 seal (Dkt. # 51) is GRANTED in part and DENIED in part. In light of the Court’s rulings, the
10 redactions to the public version of plaintiff’s motion for summary judgment (Dkt. # 57) are too
11 broad: defendant shall, within seven days of the date of this Order, file a revised redacted version
12 consistent with the parameters set forth above. The Clerk of Court is directed to unseal Dkt. #
13 54-5, # 54-6, and Dkt. # 54-8. Plaintiff may file revised redacted versions of Dkt. # 54-9 and
14 # 56 within seven days of the date of this Order. Assuming the public gets access to an
15 appropriately redacted version of the expert declarations, reports, and exhibits through new
16 filings, Dkt. # 54-9 and # 56 will remain sealed.
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20 Dated this 28th day of November, 2018.

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22 Robert S. Lasnik
23 United States District Judge
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